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AMENDED IN ASSEMBLY APRIL 17, 2007

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AMENDED IN ASSEMBLY MARCH 5, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 221**

**Introduced by Assembly Member Anderson**

*(Principal coauthors: Assembly Members Levine, Lieber, Ma, and Solorio)*

*(Coauthors: Assembly Members Adams, Benoit, Cook, DeVore, Duvall, Emmerson, Evans, Feuer, Gaines, Garrick, Horton, Houston, Jeffries, Ma, Keene, Plescia, Sharon Runner, Solorio, Strickland, and Tran)*

January 29, 2007

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An act to amend Section 16642 of, and to add ~~and repeal~~ Section 7513.7 ~~of to~~, the Government Code, relating to investments.

### LEGISLATIVE COUNSEL'S DIGEST

AB 221, as amended, Anderson. Public retirement systems: investments: Iran.

The California Constitution provides that the Legislature may by statute prohibit retirement board investments if it is in the public interest to do so, and providing that the prohibition satisfies specified fiduciary standards.

Existing law prohibits the Public Employees' Retirement System and the State Teachers' Retirement System from investing public employee retirement funds in a company with active business operations in Sudan,

as specified. Existing law also requires these retirement systems to sell or transfer any investments in a company with business operations in Sudan. Existing law requires these retirement systems to submit an annual report to the Legislature regarding any investments in a company with business operations in Sudan and the sale or transfer of those investments. Existing law requires the state to indemnify, from the General Fund, and hold harmless the present, former, and future board members, officers, and employees of, and investment managers under contract with, these retirement systems by reason of any decision to restrict, reduce, or eliminate investments in Sudan, as specified.

This bill would create the California Public ~~Investments Protection~~ *Divest from Iran* Act and additionally prohibit the Public Employees' Retirement System and the State Teachers' Retirement System from investing public employee retirement funds in a company with business operations in Iran that ~~has invested in, or is engaged in,~~ business operations with entities in the defense, oil, nuclear, or natural gas sectors of Iran or the company is engaged in business operations with an Iranian organization labeled as a terrorist organization by the United States ~~Department of State~~ *government*. The bill would require the Board of Administration of the Public Employees' Retirement System and the Teachers' Retirement Board of the State Teachers' Retirement System to sell or transfer any investments in a company with business operations in Iran, until sanctions have been revoked against Iran. ~~The bill would also require the Board of Administration and the Teachers' Retirement Board to notify the Secretary of State when these sanctions have been revoked against Iran, and these provisions would be repealed following the notice provided by these boards, Iran is removed from the United States Department of State's list of countries that have been determined to repeatedly provide support for acts of international terrorism and the President of the United States determines and certifies that Iran has ceased its efforts to design, develop, manufacture, or acquire a nuclear explosive device or related materials and technology, as specified.~~ The bill would make related legislative findings and declarations.

This bill would require these boards to report to the Legislature any investments in a company with business operations in Iran and the sale or transfer of those investments, subject to the fiduciary duty of these boards, by January 1, 2009, and every year thereafter.

This bill would indemnify from the General Fund and hold harmless the present, former, and future board members, officers, and employees

of, and investment managers under contract with these retirement systems.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares as follows:

2 (a) The Securities and Exchange Commission has determined  
3 that business activities in foreign states *such as Iran* sponsoring  
4 terrorism and that are subject to sanctions by the United States  
5 may materially harm the share value of foreign companies. Shares  
6 in these foreign companies may be held in the portfolio of public  
7 retirement systems in this state.

8 (b) Publicly traded companies in the United States are ~~not~~  
9 ~~allowed to do~~ *substantially restricted in doing* business in or with  
10 foreign states *such as Iran* that the United States Department of  
11 State has identified as sponsoring terrorism.

12 (c) Public retirement systems in this state currently invest on  
13 behalf of the citizens of California in publicly traded foreign  
14 companies that may be at risk due to business ties with foreign  
15 states *such as Iran* that sponsor terrorism *and are involved in the*  
16 *proliferation of weapons of mass destruction.*

17 (d) ~~The Legislature finds that investments~~ *Investments* in  
18 publicly traded foreign companies that have business operations  
19 in or with foreign states ~~that the United States Department of State~~  
20 ~~has identified as sponsoring terrorism risks~~ *such as Iran are liable*  
21 *for sanctions under United States law and risk* the pensions of the  
22 dedicated public employees of this state.

23 (e) Excluding companies with business activities ~~to~~ *in* foreign  
24 states *such as Iran* that sponsor terrorism *and divesting* from public  
25 portfolios will help protect the public retirement systems in this  
26 state from investment losses related to these business activities  
27 and may improve the investment performance of the public  
28 retirement systems.

29 (f) *Public Law 104-172, as renewed and amended in 2001 and*  
30 *2006, specifically provides for sanctions to be imposed on any*  
31 *entity that has invested at least twenty million dollars*  
32 *(\$20,000,000) in any year since 1996 to develop the petroleum*  
33 *resources of Iran.*

1 ~~(f) The Legislature finds that it~~

2 (g) *It is unconscionable for this state to invest in foreign*  
3 *companies with business activities benefiting foreign states such*  
4 *as Iran that commit egregious violations of human rights and*  
5 *sponsor terrorism.*

6 (h) *It is the Government of Iran, and not the people of Iran, that*  
7 *is responsible for Iran's support of terrorism and which commits*  
8 *egregious violations of human rights under which its own citizens*  
9 *are required to live.*

10 SEC. 2. Section 7513.7 is added to the Government Code, to  
11 read:

12 7513.7. (a) As used in this section, the following definitions  
13 shall apply:

14 (1) "Board" means the Board of Administration of the Public  
15 Employees' Retirement System or the Teachers' Retirement Board  
16 of the State Teachers' Retirement System, as applicable.

17 (2) "Business operations" means maintaining, selling, or leasing  
18 equipment, facilities, personnel, or any other apparatus of business  
19 or commerce in Iran, including the ownership or possession of real  
20 or personal property located in Iran.

21 (3) "Company" means a sole proprietorship, organization,  
22 association, corporation, partnership, venture, or other entity, its  
23 subsidiary or affiliate that exists for profitmaking purposes or to  
24 otherwise secure economic advantage. "Company" also means a  
25 company owned or controlled, either directly or indirectly, by the  
26 government of Iran, that is established or organized under the laws  
27 of or has its principal place of business in the Islamic Republic of  
28 Iran.

29 (4) "Government of Iran" means the government of Iran or its  
30 instrumentalities.

31 (5) "Invest" or "investment" means the purchase, ownership,  
32 or control of stock of a company, association, or corporation, the  
33 capital stock of a mutual water company or corporation, bonds  
34 issued by the government or a political subdivision of Iran,  
35 corporate bonds or other debt instruments issued by a company,  
36 or the commitment of funds or other assets to a company, including  
37 a loan or extension of credit to that company.

38 (6) "Iran" means the Islamic Republic of Iran, a territory under  
39 the administration or control of Iran, or an individual, company,

1 or public agency located in Iran that supports the Islamic Republic  
2 of Iran.

3 (7) "Military equipment" means weapons, arms, or military  
4 defense supplies.

5 (8) "Public employee retirement funds" means the Public  
6 Employees' Retirement Fund described in Section 20062 of this  
7 code, and the Teachers' Retirement Fund described in Section  
8 22167 of the Education Code.

9 ~~(9) "Research firm" means a reputable, neutral third-party~~  
10 ~~research firm.~~

11 ~~(10)~~  
12 (9) "Substantial action" means a boycott of the government of  
13 Iran, curtailing business in Iran until that time described in  
14 subdivision (m), or selling company assets, equipment, or real and  
15 personal property located in Iran.

16 (b) The board shall not invest public employee retirement funds  
17 in a company ~~with, which has~~ business operations in Iran *as*  
18 *identified by the board through, as the board deems appropriate,*  
19 *publicly available information including, but not limited to,*  
20 *information provided by nonprofit and other organizations and*  
21 *government entities, that meets either of the following criteria:*

22 (1) The company ~~has invested in, or is engaged in, is engaged~~  
23 *in* business operations with entities in the defense, oil, nuclear, or  
24 natural gas sectors of Iran.

25 (2) The company is engaged in business operations with an  
26 Iranian organization labeled as a terrorist organization by the  
27 United States ~~Department of State~~ *government.*

28 ~~(c) Notwithstanding subdivision (b), the board shall not invest~~  
29 ~~public employee retirement funds in a company that supplies~~  
30 ~~military equipment within the borders of Iran. If a company~~  
31 ~~provides equipment within the borders of Iran that may be readily~~  
32 ~~used for military purposes, including, but not limited to, radar~~  
33 ~~systems and military-grade transport vehicles, there shall also be~~  
34 ~~a strong presumption against investing in that company unless that~~  
35 ~~company implements safeguards to prevent the use of that~~  
36 ~~equipment for military purposes.~~

37 ~~(d) (1) The board shall, without regard to the provisions~~  
38 ~~regarding competitive bidding, contract with a research firm or~~  
39 ~~firms to determine those companies that have business operations~~  
40 ~~in Iran. Those research firms shall, in the aggregate, obtain data~~

1 ~~on a majority of companies with business operations in Iran. On~~  
2 ~~or before March 30, 2008, those research firms shall report any~~  
3 ~~findings to the board and those research firms shall submit further~~  
4 ~~findings to the board if there is a change of circumstances in Iran.~~

5 ~~(2) In addition to the reports described in paragraph (1), the~~  
6 ~~(c) The board shall take all of the following actions no later than~~  
7 ~~March 30, 2008:~~

8 ~~(A)~~  
9 ~~(1) Review publicly available information regarding companies~~  
10 ~~with business operations in Iran and any other information as~~  
11 ~~deemed appropriate by the board.~~

12 ~~(B)~~  
13 ~~(2) Contact other institutional investors that invest in companies~~  
14 ~~with business operations in Iran.~~

15 ~~(C)~~  
16 ~~(3) Send written notice to a company with business operations~~  
17 ~~in Iran that the company may be subject to this section.~~

18 ~~(e)-(1)~~  
19 ~~(d) The board shall determine, by the next applicable board~~  
20 ~~meeting and based on the information and reports described in~~  
21 ~~subdivision-(d) (c), if a company meets the criteria described in~~  
22 ~~subdivision (b)-or-(e). If the board plans to invest or has~~  
23 ~~investments in a company that meets the criteria described in~~  
24 ~~subdivision (b)-or-(e), that planned or existing investment shall be~~  
25 ~~subject to subdivisions (g) and (h).~~

26 ~~(2)~~  
27 ~~(e) Investments of the board in a company that does not meet~~  
28 ~~the criteria described in subdivision (b)-or-(e) are not subject to~~  
29 ~~subdivision (h) if the company does not subsequently meet the~~  
30 ~~criteria described in subdivision (b)-or-(e). The board shall identify~~  
31 ~~the reasons why that company does not satisfy the criteria described~~  
32 ~~in subdivision (b)-or-(e) in the report to the Legislature described~~  
33 ~~in subdivision (i).~~

34 ~~(f) (1) Notwithstanding subdivision subdivisions (d) and (e),~~  
35 ~~if the board's investment in a company described in subdivision~~  
36 ~~(b)-or-(e) is limited to investment via an externally and actively~~  
37 ~~managed commingled fund, the board shall contact that fund~~  
38 ~~manager in writing and request that the fund manager remove that~~  
39 ~~company from the fund as described in subdivision (h). On or~~  
40 ~~before June 30, 2008, if the fund or account manager creates a~~

1 fund or account devoid of companies described in subdivision (b)  
2 ~~or (e)~~, the transfer of board investments from the prior fund or  
3 account to the fund or account devoid of companies with business  
4 operations in Iran shall be deemed to satisfy subdivision (h).

5 (2) If the board's investment in a company described in  
6 subdivision (b)~~or (e)~~ is limited to an alternative fund or account,  
7 the alternative fund or account manager creates an actively  
8 managed commingled fund that excludes companies described in  
9 subdivision (b)~~or (e)~~, and the new fund or account is deemed to  
10 be financially equivalent to the existing fund or account, the  
11 transfer of board investments from the existing fund or account to  
12 the new fund or account shall be deemed to satisfy subdivision  
13 (h). If the board determines that the new fund or account is not  
14 financially equivalent to the existing fund, the board shall include  
15 the reasons for that determination in the report described in  
16 subdivision (i).

17 (3) The board shall make a good faith effort to identify any  
18 private equity investments that involve companies described in  
19 subdivision (b)~~or (e)~~, or are linked to the government of Iran. If  
20 the board determines that a private equity investment clearly  
21 involves a company described in subdivision (b)~~or (e)~~, or is linked  
22 to the government of Iran, the board shall consider, at its discretion,  
23 if those private equity investments shall be subject to subdivision  
24 (h). If the board determines that a private equity investment clearly  
25 involves a company described in subdivision (b)~~or (e)~~, or is linked  
26 to the government of Iran and the board does not take action as  
27 described in subdivision (h), the board shall include the reasons  
28 for its decision in the report described in subdivision (i).

29 (g) Except as described in ~~subdivision (f) or paragraph (2) of~~  
30 ~~subdivision (e) subdivisions (e) and (f)~~, the board, in the board's  
31 capacity of shareholder or investor, shall notify any company  
32 described in ~~paragraph (1) of subdivision (e) subdivision (d)~~ that  
33 the company is subject to subdivision (h) and permit that company  
34 to respond to the information and reports described in subdivision  
35 ~~(d) (c)~~. The board shall request that the company take substantial  
36 action no later than 90 days from the date the board notified the  
37 company under this subdivision. If the board determines that a  
38 company has taken substantial action or has made sufficient  
39 progress towards substantial action before the expiration of that  
40 90-day period, that company shall not be subject to subdivision

1 (h). The board shall, at intervals not to exceed 90 days, continue  
2 to monitor and review the progress of the company until that  
3 company has taken substantial action in Iran. A company that fails  
4 to complete substantial action or continue to make sufficient  
5 progress towards substantial action by the next time interval shall  
6 be subject to subdivision (h).

7 (h) If a company described in ~~paragraph (1) of subdivision (e)~~  
8 *subdivision (d)* fails to complete substantial action by the time  
9 described in subdivision (g), the board shall take the following  
10 actions:

11 (1) The board shall not make additional or new investments or  
12 renew existing investments in that company.

13 (2) The board shall liquidate the investments of the board in  
14 that company no later than 18 months after this subdivision applies  
15 to that company. The board shall liquidate those investments in a  
16 manner to address the need for companies to take substantial action  
17 in Iran and consistent with the board's fiduciary responsibilities  
18 as described in Section 17 of Article XVI of the California  
19 Constitution.

20 (i) On or before January 1, 2009, and every year thereafter, the  
21 board shall file a report with the Legislature. The report shall  
22 describe the following:

23 (1) A list of investments the board has in companies with  
24 business operations in Iran, including, but not limited to, the issuer,  
25 by name, of the stock, bonds, securities, and other evidence of  
26 indebtedness.

27 (2) A detailed summary of the business operations a company  
28 described in paragraph (1) has in Iran and whether that company  
29 satisfies ~~all of~~ the criteria in subdivision (b) ~~or (e)~~.

30 (3) Whether the board has reduced its investments in a company  
31 that satisfies the criteria in subdivision (b) ~~or (e)~~.

32 (4) If the board has not completely reduced its investments in  
33 a company that satisfies the criteria in subdivision (b) ~~or (e)~~, when  
34 the board anticipates that the board will reduce all investments in  
35 that company or the reasons why a sale or transfer of investments  
36 is inconsistent with the fiduciary responsibilities of the board as  
37 described in Section 17 of Article XVI of the California  
38 Constitution.

39 (5) Any information described in ~~subdivision~~ *subdivisions (d)*  
40 *and (e)*.



1 (6) A detailed summary of investments that were transferred to  
2 funds or accounts devoid of companies with business operations  
3 in Iran as described in subdivision (f).

4 (7) *An annual calculation of any costs or investment losses or*  
5 *other financial results incurred in compliance with the provisions*  
6 *of this section.*

7 (j) If the board voluntarily sells or transfers all of its investments  
8 in a company with business operations in Iran, this section shall  
9 not apply except that the board shall file a report with the  
10 Legislature related to that company as described in subdivision  
11 (i).

12 (k) Nothing in this section shall require the board to take action  
13 as described in this section unless the board determines, in good  
14 faith, that the action described in this section is consistent with the  
15 fiduciary responsibilities of the board as described in Section 17  
16 of Article XVI of the California Constitution.

17 (l) Subdivision (h) shall not apply to any of the following:

18 (1) Investments in a company that is primarily engaged in  
19 supplying goods or services intended to relieve human suffering  
20 in Iran.

21 (2) Investments in a company that promotes health, education,  
22 or journalistic, religious, or welfare activities in Iran.

23 (3) Investments in a United States company that is authorized  
24 by the federal government to have business operations in Iran.

25 ~~(m) This section shall be operative only until the United States~~  
26 ~~revokes its current sanctions against Iran. When the United States~~  
27 ~~revokes its current sanctions against Iran, the board shall notify~~  
28 ~~the Secretary of State of this fact, and this section shall be repealed~~  
29 ~~on January 1 subsequent to the date that the Secretary of State~~  
30 ~~receives the notice described in this subdivision.~~

31 *(m) This section shall cease to be operative if both of the*  
32 *following apply:*

33 *(1) Iran is removed from the United States Department of State's*  
34 *list of countries that have been determined to repeatedly provide*  
35 *support for acts of international terrorism.*

36 *(2) Pursuant to Public Law 104-172, as amended, the President*  
37 *of the United States determines and certifies to the appropriate*  
38 *committee of the Congress of the United States that Iran has ceased*  
39 *its efforts to design, develop, manufacture, or acquire a nuclear*  
40 *explosive device or related materials and technology.*

(n) This section shall be known and may be cited as the California Public Investments Protection *Divest from Iran* Act.

SEC. 3. Section 16642 of the Government Code is amended to read:

16642. Present, future, and former board members of the Public Employees' Retirement System or the State Teachers' Retirement System, jointly and individually, state officers and employees, research firms described in subdivision (d) of Section 7513.6 ~~or subdivision (d) of Section 7513.7~~, and investment managers under contract with the Public Employees' Retirement System or the State Teachers' Retirement System shall be indemnified from the General Fund and held harmless by the State of California from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorney's fees, and against all liability, losses, and damages of any nature whatsoever that these present, future, or former board members, officers, employees, research firms *as described in subdivision (d) of Section 7513.6*, or contract investment managers shall or may at any time sustain by reason of any decision to restrict, reduce, or eliminate investments pursuant to Sections 7513.6 and 7513.7.

CORRECTIONS:

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Text—Pages 5 and 6.